APPEAL NO. 010721

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 5, 2001. The hearing officer decided that the appellant (claimant) had not proven that he sustained a repetitive trauma injury in the course and scope of employment with the asserted date of injury of _____. He held for the claimant on the issue of timely notice, and also held that the claimant was unable to work due to the claimed injury but that there was no disability because the injury was not compensable. The claimant has appealed the determinations against him, and the respondent (carrier) seeks affirmance in response.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding against the claimant on the issues of injury and disability. The hearing officer has accurately summarized the facts and correctly points out that there is a dearth of evidence about the purported mechanism of injury. The theory of recovery was repetitive trauma and the claimant specifically denied that there was a specific occurrence he could link to driving his truck that would have led to a back injury. Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). At a minimum, proof of a repetitive trauma injury should consist of some presentation of the duration, frequency, and nature of activities alleged to be traumatic. Texas Workers' Compensation Commission Appeal No. 960929, decided June 28, 1996. None of that was set out in the claimant's testimony at the CCH or in other evidence. The claimant did not seek medical treatment until October 2000, and one doctor he consulted, Dr. W, describes the injury-causing mechanism as a motor vehicle accident. Conflicting evidence was presented that the claimant was not cooperative in getting a drug screen, although one was scheduled for him numerous times. He presented an "off work" statement when he was terminated for failure to undergo a drug screen.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own

judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Finding the decision sufficiently supported by the record, we affirm.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge